

# **Exhibit B**

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December 8, 2020

**BY EMAIL**

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Re: *CSX Transportation, Inc., et al v. Norfolk Southern Railway Company, et al*  
Civil Action No.: 2:18-cv-00530

Dear Monica and Michael:

I write in follow up to Monica's letter of November 24, 2020, and the supplemental production that Norfolk Southern Railway Company (NSR) made to my client, CSX Transportation, Inc. (CSXT), on November 30, 2020.

I am extremely troubled by NSR's delay in producing the hard copy files maintained by Messrs. McClellan and Luebbers, both of whom NSR identified as document custodians in this case. These documents are directly relevant to core issues in the case and directly responsive to at least a dozen of CSXT's First Requests for Production of Documents, which CSXT served more than a year ago, in October 2019.<sup>1</sup> Yet these documents were not produced until over eight months after CSXT's original discovery period closed, and after the deposition of Mr. Luebbers and *two* depositions of Mr. McClellan. Of further concern, it was not until Mr. McClellan's second deposition on October 30—which itself was held to remedy NSR's belated production of documents—that CSXT learned that he kept a hard copy folder of documents pertaining to the NPBL.<sup>2</sup> Had Mr. McClellan not been deposed for a second time (pursuant to a court order that

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<sup>1</sup> See, e.g., Request for Production Nos. 1, 3, 4, 5, 9, 10, 11, 16, 21, 22, 23, and 25; *see also* Definition No. 4 (defining "documents" to include "all writings of any kind whatsoever, whether handwritten, typed, printed, computerized, or otherwise visually reproduced," including "files").

<sup>2</sup> Mr. McClellan was first deposed on February 20, 2020, and Mr. Luebbers was deposed on February 25.

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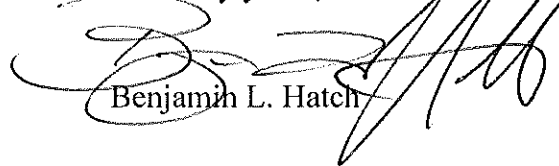
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NSR opposed), CSXT likely would never have learned that these highly relevant documents existed. As a result of NSR's belated production of these materials, CSXT was deprived of the ability to utilize them in the depositions of Messrs. McClellan and Luebbers, or in its discovery period more generally.

In the November 24 letter, Monica indicated that the hard copy files of Messrs. McClellan and Luebbers had been preserved but "inadvertently" omitted from NSR's collection efforts. Given this finding, CSXT has concerns about the fidelity of NSR's production generally. Please confirm by Tuesday, December 15, 2020 that you have collected and produced all responsive, non-privileged documents in the possession, custody, or control of NSR for which Messrs. McClellan and Luebbers are the custodians—Monica's letter discusses certain files associated with these individuals, but I would like confirmation that *all* documents have been collected and produced, subject to the parameters set forth in the parties' agreed ESI Order. Further, we ask that you confirm by the same date that NSR has collected and produced all responsive, non-privileged hard copy documents for all other custodians identified by NSR.

CSXT reserves all its rights for raising issues related to these belatedly produced documents with NSR in further correspondence, or in meet and confer, or before the Court for appropriate remedy, as necessary. However, before proceeding in those regards, I would appreciate your responses to my above questions so I can fully understand the scope of what has not been provided.

Sincerely yours,



Benjamin L. Hatch

BLH:

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